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FOR
PUBLIC DISPUTE RESOLUTION

A Joint Program of
CALIFORNIA STATE UNIVERSITY, SACRAMENTO
McGEORGE SCHOOL OF LAW,
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Date: May 23, 1997

TO: Lester Snow, Steve Yaeger, Sharon Gross, CALFED Bay-Delta Program

FROM: Eugenia Laychak

SUBJECT: Major Issues Discussed at the May 22, 1997 BDAC Meeting

Provided below is a list of major issues discussed at the meeting.

Integrity of BDAC and Other Public CALFED Processes

Two major issues were addressed:

ASSOCIATES

Susan Carpenter
Mediator/Author
Riverside, California

Larry Hoover
Mediator
Davis, California

Larry Norton
Mediator
San Rafael, California

Betsy Watson
Mediator/Professor
Director of the Institute
for the Study of
Alternative Dispute
Resolution (ISADR) at
Humboldt State University

How to assure that results of private dialogues get discussed in public. An underlying concern is the fear that private deals will get made that will bias the selection of the preferred alternative. Suggestions included distributing minutes of the CUWA/Ag discussion in the BDAC packets and opening lines of communication between the BDAC work group chairs and the CUWA/Ag work groups.

How to assure that BDAC discussions are productive. Suggestions included scheduling "hot button" issues on BDAC agendas for full group discussion, having breakout sessions at BDAC meetings, or forming more work groups, such as one for water supply reliability.

Assurances

Balancing the need for water supply reliability with the flexibility of adaptive management. A suggestion was made to embed a reliable and specific management and decision-making process into the adaptive management process. This suggestion was countered with a preference for a flexible process agreement.

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Balancing the desire by public interest groups for strong regulatory agencies with preferences for contractual agreements and MOU's by water agencies.

Several BDAC members supported joint discussions between the Ecosystem Restoration and Assurances work groups.

Phase II Alternative Issues

Concern that the isolated facility will result in relaxation of Bay-Delta water quality standards, specifically the X2 standard.

The Program will need to justify the percentage of new storage allocated to urban, agricultural and environmental uses.

The need to avoid or limit entrainment of fish and eggs and larvae. A related issue is the effectiveness of fish screens and proposed mechanisms to address the issue over the long term if fish screens are not effective or reliable. One BDAC member asked for a more extended discussion on fish screens.

The need for options, in addition to land use conversion, to address San Joaquin basin salinity and drainage problems.

The need to carefully develop new floodways on the San Joaquin and Cosumnes Rivers to restore channel features necessary for increased survival of fish.

The Program will be expected to thoroughly analyze cumulative and redirected impacts of the alternatives. One BDAC member suggested inviting agricultural experts to discuss long-term agricultural capitalization and water use issues to address potential impacts of the alternatives on agriculture in the CALFED solution area.

A preference was expressed to use the least intrusive measures, first, to meet Program objectives, and use adaptive management concepts to refine or change the measures, as warranted.

Concern was expressed for the cost of the levee program and who will pay for it.

Alternative Evaluation Process

One BDAC member emphatically requested to see the evaluation results, in addition to being asked to discuss issues.

Earlier in the meeting, a need for a clear explanation in the impact assessment of the approaches and assumptions used in the economic analysis was expressed.

BDAC Responses to the Following Questions:

Does this set of alternatives and variations represent an adequate range of actions to evaluate and analyze in impact assessment?

BDAC response from six members was a qualified yes. Caveats included the need for more detail not only on the alternative components and actions, but also on costs and the operating criteria. More than one member expressed concern that as actions and components are mixed and matched, common programs may change. Two members expressed particular concern about possible changes in the Ecosystem Restoration and Water Use Efficiency programs.

What are BDAC concerns with the alternatives and variations relative to the solution principles?

BDAC members expressed concern regarding the need for equitability, durability and ensuring there are no redirected impacts. It was recognized that benefits and risks will need to be balanced, and that discussions on benefits and mitigation will be challenging. They expressed a need to set up a process for dealing with potential failure of a key action or component of an alternative, such as fish screens. A suggestion was made to design the alternatives with enough flexibility to solve such problems with a series of solutions.

It was suggested that Alternative 1A should be the preferred alternative as it appeared to best meet the solution principles. An opposite opinion was expressed; specifically it was pointed out that the alternative may in fact, perform very poorly against the principles.

Next Steps

When developing future BDAC agendas and setting dates for meetings consider a feasible schedule for the alternative evaluation process. Included in the schedule should be discussion on key issues at BDAC, work groups and other venues, in addition to time needed for development of relevant documents. Carefully consider the information that will be available for BDAC packets and presentations, in addition to BDAC member requests to be consulted throughout the alternative evaluation process.